

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Freyco Trucking, Inc. and Freyco Excavating, Inc.
and Teamsters Local Union 142, an affiliate of
the International Brotherhood of Teamsters,
AFL-CIO. Case 13-CA-40204-1**

January 28, 2003

DECISION AND ORDER

**BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER**

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on May 17, 2002, the General Counsel issued the complaint on August 22, 2002, against Freyco Trucking, Inc. and Freyco Excavating, Inc., the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the Act. The Respondents failed to file an answer.

On October 15, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On October 16, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 24, 2002, notified the Respondent that unless an answer was received by October 2, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Freyco Trucking, Inc., an Indiana corporation with a place of business in Merrillville, Indiana, has been engaged in the business of transporting construction materials and equipment to various jobsites.

During the 12-month period preceding issuance of the complaint, a representative period, Respondent Freyco Trucking, Inc., in conducting its operations described above, purchased and received at its Merrillville, Indiana facility goods valued in excess of \$50,000 from other enterprises, including Bulka Materials and Levy Corporation, located within the State of Indiana, each of which other enterprises had received these goods directly from points outside the State of Indiana. We find that Respondent Freyco Trucking, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Respondent Freyco Excavating, Inc., an Indiana corporation with a place of business in Merrillville, Indiana, has been engaged in the business of transporting construction materials and equipment to various jobsites.

During the 12-month period preceding issuance of the complaint, a representative period, Respondent Freyco Excavating, Inc., in conducting its operations described above, purchased and received at its Merrillville, Indiana facility goods valued in excess of \$50,000 from other enterprises, including Bulka Materials and Levy Corporation, located within the State of Indiana, each of which other enterprises had received these goods directly from points outside the State of Indiana. We find that Respondent Freyco Excavating, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

In addition, we find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, William H. Frey held the position of Respondent Freyco Trucking, Inc.'s owner, and has been a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent Freyco Trucking, Inc., within the meaning of Section 2(13) of the Act.

At all material times, William H. Frey held the position of Respondent's Freyco Excavating, Inc.'s owner, and has been a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent Freyco Excavating, Inc. within the meaning of Section 2(13) of the Act.

The following employees of Respondent Freyco Trucking, Inc., herein called the Trucking Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All general construction and maintenance group employees, asphalt pavers, working foremen, journeymen mechanics, Class B mechanics, mechanics helpers and all employees working in the Mechanical and Maintenance occupation classifications employed by Freyco Trucking, Inc., at the Company's facility located at 8350 Whitcomb, Merrillville, Indiana; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

The following employees of Respondent Freyco Excavating, Inc., herein called the Excavating Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing the work for the job classifications described in Article I, Section 4 and Article 11 of the collective bargaining agreement between Freyco Excavating, Inc. and the Union employed by Freyco Excavating, Inc., at the Company's facility located at 8350 Whitcomb, Merrillville, Indiana, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

At all material times, the Union has been the designated collective-bargaining representative of the Trucking Unit and has been recognized as the representative by Respondent Freyco Trucking, Inc. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms on June 1, 2001, and expires on May 31, 2004.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive bargaining representative of the Trucking Unit described above for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

At all material times, the Union has been the designated collective-bargaining representative of the Excavating Unit described above and has been recognized as the representative by Respondent Freyco Excavating, Inc. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms on June 1, 2000, and expires on May 31, 2003.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive bargaining representative of the Excavating Unit described above for

the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about April 8, 2002, and continuing, the Union, by letter, requested that Respondent Freyco Trucking, Inc., and Respondent Freyco Excavating, Inc., furnish the Union with the following information:

(i) A copy of all payroll records for the last 1-year period; and

(ii) A copy of all payments made to the Health and Welfare Fund and the Pension Fund for the last 1-year period.

Since about April 19, 2002, and continuing to date, Respondent Freyco Trucking, Inc., and Respondent Freyco Excavating, Inc., have failed and refused to furnish the Union with the information requested.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Trucking and Excavating Units.¹

CONCLUSION OF LAW

By the acts and conduct described above, Respondent Freyco Trucking, Inc., and Respondent Freyco Excavating, Inc., have been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the units, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have failed and refused to provide requested information to the Union which is necessary and relevant to the performance of its functions as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondents to provide the information requested by the Union.

ORDER

The National Labor Relations Board orders that the Respondents, Freyco Trucking, Inc. and Freyco Excavating, Inc., Merrillville, Indiana, their officers, agents, successors, and assigns, shall

¹ We construe the Union's request as pertaining to the payroll records of unit employees and to benefit fund payments made on their behalf, although the information request is not described in these specific terms.

1. Cease and desist from

(a) Failing and refusing to provide necessary and relevant information to the Union, on request.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union the information it requested by letter dated April 8, 2002.

(b) Within 14 days after service by the Region, post at its facility in Merrillville, Indiana, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since April 8, 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. January 28, 2003

| | |
|---------------------|----------|
| Robert J. Battista, | Chairman |
| Wilma B. Liebman, | Member |
| Peter C. Schaumber, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to provide necessary and relevant information to the Union, on request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union the information it requested by letter dated April 8, 2002.

FREYCO TRUCKING, INC., AND FREYCO EXCAVATING, INC.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

